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February 2, 1999

Hand Delivered

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554


Re: ***Ex Parte Notification***
WT Docket 98-229, Cellular Telecommunications Industry Association's
Petition for Forbearance From CMRS Number Portability Obligations.

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's rules, Sprint Spectrum, L.P. d/b/a Sprint PCS hereby submits an original and two copies of the attached letter in the above-referenced proceeding.

Please contact the undersigned with any questions.

Sincerely,



Anthony C. Traini

cc: Yog Varma, Deputy Chief, CCB
Blaise Scinto, Acting Division Chief, Network Services Division, CCB
Les Selzer, Economist, Network Services Division, CCB
Gayle Radley Teicher, Attorney Advisor, Network Services Division, CCB

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Jonathan Chambers
Vice President and Associate General Counsel

January 29, 1999

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Mr. Yog Varma
Depute Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., 5th Floor
Washington, D.C. 20554

RECEIVED

JAN 29 1999

Re: **Numbering Resource Optimization**
NSD File No. L-98-134

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Mr. Varma:

Yesterday, the Cellular Telecommunications Industry Association ("CTIA") submitted a proposal designed to help ensure that telecommunications carriers use telephone numbers efficiently.¹ While Sprint PCS supports this proposal, it submits this letter both to explain the need for certain provisions and to suggest ways that, in its judgment, the proposal can be improved.

There appears to be a growing misperception, particularly among certain state commissions, over the role that number conservation can and should play in the situations where carriers cannot receive needed additional numbering resources. Sprint PCS therefore submits the following core principles that it believes should guide the Commission's evaluation of any new conservation requirements.

1. NXX Code Rationing Does Not Constitute Number Conservation. Number conservation involves steps to improve "the efficient and effective use of a finite numbering resource" and thereby delay the date that area code relief is needed.² NXX code rationing (*e.g.*, lotteries) does not improve in any way "the efficient and effective use" of numbers; instead, rationing is an extraordinary procedure adopted to slow *artificially* the demand for additional numbering resources (when demand for services does not slow). Industry imposes rationing when a NPA is declared to be in jeopardy — that is, where the demand for numbers exceeds their available supply and where inevitably, certain carriers will not receive the numbers they need to provide their services. The goal of rationing is to help ensure that, in a time of an *artificial* shortage, carriers most in need of numbers can obtain them. Simply stated, rationing indicates that the relief process has not worked properly because a new area code has not been implemented soon enough.

¹ See Letter from Michael F. Altschul, CTIA General Counsel, to Yog Varma, Deputy Chief, Common Carrier Bureau (Jan. 28, 1999)("CTIA Proposal").

² Industry Numbering Committee, *Central Office Code (NXX) Assignment Guidelines*, INC 95-0407-008, § 13 Glossary: Conservation (Sept. 18, 1998)("NXX Code Assignment Guidelines").

2. Conservation Methods Are Not a Substitute for Timely Area Code Relief. The Commission correctly recognized last September that “[c]onservation methods are not . . . area code relief.”³ Conservation methods offer the promise of *delaying* the date that area code relief may become necessary, but they do not obviate the need for relief. For example, to its credit the Texas Commission recently made sweeping consolidations of LEC rate centers, including the consolidation of 29 rate centers in San Antonio into one rate center.⁴ This consolidation, however, extended the life of the existing 210 NPA by only two years.⁵ The real benefits of this rate center consolidation will be in the future. Specifically, the life of a new area code will be extended considerably because a new entrant entering the San Antonio market will initially need only one NXX to serve the entire market (vs. the up to 29 codes it may have required in the past).

3. Adoption of More Aggressive Conservation Methods, Even in the Immediate Future, Will Not Solve the Current Crisis. Landline rate center consolidation can be an effective conservation method but, as illustrated by the San Antonio example above, its benefits as a conservation tool will be realized largely after a new area code has been implemented. Similarly, there is growing recognition that adoption of a new conservation method, number pooling, “should result in significant efficiencies in NXX administration and use.”⁶ Yet, this promising conservation method will provide *no* assistance in resolving the current controversy. The industry has advised the Commission that thousands-block pooling “could be implemented initially sometime within a 10 to 19 month interval after a regulatory order.”⁷ Pooling and other new number conservation methods will take time to implement and their beneficial impact will not be realized for some time.⁸ Industry needs relief today — not a year or two from now. The current situation

³ *Pennsylvania NPA Order*, NSD File No. L-97-42, FCC 98-224, at ¶ 22 (Sept. 28, 1998). *See also id.* at ¶ 26 (“State commissions may not use conservation measures as substitutes for area code relief or to avoid making difficult and potentially unpopular decisions on area code relief.”).

⁴ *See Texas Petition for Reconsideration*, NSD File No. L-97-42, at 9 (Dec. 15, 1998).

⁵ *Ibid.*

⁶ *Pennsylvania NPA Order* at ¶ 22. Indeed, implementation of number pooling by landline LECs should eliminate most (if not all) of the alleged abuses referred to by various states in their pending reconsideration petitions. However, as Sprint has previously explained, because CMRS providers use numbers more efficiently than landline carriers and because they are growing so rapidly, the CMRS industry should not be required to participate in pooling arrangements at this time. *See Sprint Corporation Comments*, NSD File No. 98-134 (Dec. 21, 1998).

⁷ Number Resource Optimization Working Group, *Modified Report to NANC on Number Optimization Methods*, at § 5.6.4 (Oct. 21, 1998).

⁸ As the Commission has observed, even when pooling is implemented, it will “probably be a more effective conservation tool if applied to new area codes . . . rather than to codes that already have a high usage rate.” *Pennsylvania NPA Order* at ¶ 29.

where industry is being increasingly forced to ration the dwindling supply of available NXX codes because some states are unwilling to implement relief promptly can be tolerated no longer. If this situation continues, consumers and businesses in large areas of the country will soon be precluded from obtaining desired telecommunications services — because carriers will have no numbers to assign to them.

Last September the Commission admonished state commissions that they “may not use conservation measures as substitutes for area code relief or to avoid making difficult and unpopular decisions”:

State commissions, by declining to implement area code relief, should not put carriers in the position of having no numbers and therefore being unable to serve customers.⁹

This admonition has been virtually ignored. It appears that over 60 NPAs are now in jeopardy — 12 having been placed in this condition since the release of the Commission’s September order.¹⁰ Yet, based on publicly available information from NANPA, it does not appear that a single NPA relief plan has been adopted during the last four months.¹¹

The Commission has noted that the very success of competitive markets depends upon the ability of carriers to obtain promptly additional numbers.¹² Given the inability (or unwillingness) of certain state commission to implement area code relief in a timely fashion, the Commission should act decisively, particularly to ensure that federal licensees have the numbers they need *when they need them* to provide their federally-authorized services.

As noted, the current crisis will not be solved through implementation of conservation measures. Rather, it will be solved only if the Commission adopts strict timelines

⁹ *Pennsylvania NPA Order* at ¶¶ 26 and 38.

¹⁰ NPAs placed in jeopardy since the *Pennsylvania NPA Order* include: 318, 407, 503, 530, 602, 603, 612, 626, 703, 707, 716, and 760. See www.nanpa.com/news/jeopardy_declaration_table.html.

¹¹ For example, the 516 NPA serving Long Island has been in jeopardy for over a year, and industry has been relegated to rationing only three codes per month. A year ago the code administrator asked the New York Commission to adopt a relief plan by April 1998. However, it was only two days ago that the New York Commission even requested public comment on a relief plan.

¹² *Id.* at ¶ 38 (“For competition to continue to develop, all carriers must have access to numbering resources. Relying on experimental conservation methods, rather than planning for traditional area code relief, during the jeopardy period would place some carriers at risk and could delay area code relief implementation well beyond the projected exhaust dates.”).

governing each stage of the area code relief process: industry recommendation meetings, state commission consideration and adoption of relief plans, length of time before permissive dialing begins, and length of permissive dialing period. Sprint PCS submits that only through timelines can there be some assurance that area code relief can be implemented timely.

A. The Commission Must Act With Great Care Before Adopting Any NXX Utilization Thresholds to Ensure That New Entrants and Rapidly Growing Carriers Are Not Placed At a Competitive Disadvantage

CTIA proposes that the Commission adopt NXX code utilization thresholds that would be used to determine when a carrier may request an additional NXX code:

In a Jeopardy situation, a telecommunications carrier may request numbering resources for a given rate center upon reaching utilization rate whereby at least 60% of its total numbers are "unavailable" in that rate center. Effective July 1, 2000, the minimum rate center utilization rate shall increase to 65%, and effective July 1, 2001, it shall increase to 70%.¹³

Sprint PCS would oppose this recommendation if CTIA's proposal were limited to utilization levels. As explained below, adoption of rigid utilization thresholds would place new entrants and rapidly growing carriers at a significant competitive disadvantage. Indeed, adoption of rigid utilization thresholds would preclude the assignment of NXX codes to carriers needing them the most. CTIA's proposal recognizes that there are circumstances where code requests must be allowed outside of its proposed parameters:

A carrier may also request additional numbering resources for a given rate center, even if it has not reached the minimum utilization rate, if it has a bona fide need for numbering resources based on historical activation data or other credible evidence. CTIA proposes that carriers demonstrate need by means of a showing satisfactory to the NANPA.¹⁴

With this important caveat, Sprint PCS can endorse CTIA's proposal.

Utilization thresholds coupled with historical growth rates can help an incumbent carrier determine when it might need an additional NXX code to meet continued

¹³ CTIA Proposal, § I, bullet one.

¹⁴ *Id.*, bullet three. Because new entrants have little "historical activation data" and because the CMRS activation rates fluctuate so greatly during the year, it is important that carriers be permitted to base a request for an additional code on "other credible evidence."

growth.¹⁵ The Commission must understand, however, that utilization thresholds by themselves are not always an accurate barometer of one's need for numbers and that adoption of rigid utilization thresholds could very well have *the unintended effect of preventing a carrier most in need of numbers from obtaining numbers.*

Rapidly Growing Carriers. Number utilization thresholds will not ensure that a carrier experiencing rapid growth will timely receive additional numbers. Assume a new entrant carrier has one NXX code in a metropolitan area, and that a requirement is imposed that carriers may not request a second code until 60% of the numbers in their first code are unavailable. In this example, a carrier can request a second code (its first "growth" code) when its supply of available numbers has been reduced to 4,000.

Under ordinary circumstances, it takes 10 weeks from a code request to receive and activate a new NXX code.¹⁶ Although a 60% utilization requirement coupled with this 10-week process does not pose a problem for a carrier with stable growth (or with a large supply of existing codes, as discussed below), this same 60% requirement and 10-week process will preclude a carriers experiencing rapid growth from timely obtaining additional numbers.

Assume the new entrant is gaining 500 new customers each week. (In a dozen or so markets, Sprint PCS is gaining customers at a rate of 1,000 *or more* each week.) With a 60% utilization threshold, this carrier could not request a second code until its supply of available numbers has been reduced to 4,000. But with a growth rate of 500 customers per week, this new entrant's supply of numbers will exhaust in eight weeks — two weeks *before* the carrier can activate and begin using its new code.¹⁷ In this example, the carrier would have to stop selling service for two weeks (or more) or find some means to slow temporarily the demand for its popular services.

The discussion above assumes that additional NXX codes are readily available for assignment. As the Commission is well aware, however, many of our nation's NPAs are

¹⁵ Of course, new entrants do not have historical data upon which they can rely. In addition, as competition intensifies and as all carriers must introduce new promotions, historical data may lose its significance even for carriers that have been in a market for a year or more.

¹⁶ It takes a *minimum* of 67 days to begin using a new NXX code — at least 66 days to obtain the code and at least one more day to test the new code. *See NXX Code Assignment Guidelines* at § 6.1.2 ("Applicants should request 'effective dates' at least 66 calendar days after the date of receipt of the code request. This 66 calendar day interval is necessary because of the current standard 45 day activation . . . for NXX code activation plus additional time (21 calendar days) required for code request processing.") (emphasis added). An additional two to 10 days are needed to test the code before the code is activated for customer use.

¹⁷ With a growth rate of 1,000 customers weekly, the carrier's supply of numbers will exhaust in four weeks and it will be out of numbers for six weeks (or longer).

in jeopardy, and in many of these NPAs, additional codes are being rationed (often through a lottery).¹⁸ In these jeopardy NPAs, carriers generally do not receive an additional code within 10 weeks of a request. Rather, their ability to receive a code is now dependent on their success in the lottery. If it takes three months to obtain a code through the lottery, a carrier adding 500 customers each week will be without numbers for 14 weeks (12 weeks to obtain a code in the lottery plus an 10 additional weeks to activate the code minus the eight weeks before the current supply exhausts). This is precisely the predicament Sprint PCS finds itself in an increasing number of NPAs.

The Incumbent Advantage. Adoption of a rigid utilization factor would also place new entrants at a significant disadvantage *vis-à-vis* incumbent carriers. Assume a new entrant and incumbent are each growing at a rate of 500 customers weekly. As noted above, if the new entrant has only one code (and assuming new codes are not being rationed), this entrant will exhaust its supply of numbers at least two weeks before it can activate and begin using a new code.

In contrast, incumbent carriers find themselves in a very different situation. Assume an incumbent cellular carrier already has 45 codes. With a 60% utilization threshold, the incumbent would have the right to request an additional (46th) code when its supply of available numbers has been reduced to 180,000 (40% of 450,000 numbers). Put another way, with this utilization threshold, an incumbent could request an additional code even though its current supply of numbers will not exhaust for five years (180,000 available numbers/500 customers weekly = 360 weeks). To make matters worse, by requesting an additional code, it now becomes more difficult for new entrants to obtain codes through the rationing/lottery process — even though their very ability to continue providing service depends upon receipt of additional numbers.

The industry's *NXX Code Assignment Guidelines* are written in such a way that all carriers — new entrant/incumbent; slow/rapid growth — are treated equally. Specifically, the *Guidelines* provide that assignment of a growth code is not appropriate unless the existing code will exhaust within 12 months (or six months when an NPA is in jeopardy).¹⁹ Sprint PCS believes that this months-to-exhaust approach is an effective standard.

Nevertheless, Sprint PCS does not oppose the utilization levels proposed by CTIA — *so long as* the Commission's plan includes the CTIA proposed contingency that a carrier may also request additional numbering resources "even if it has not reached the minimum utilization rate, if it has a bona fide need for numbering resources based on historical activation data or other credible evidence."²⁰ Without such a contingency, car-

¹⁸ See note 10 *supra*.

¹⁹ *NXX Code Assignment Guidelines* at §§ 4.2.1 and 9.4(C).

²⁰ CTIA Proposal § I, bullet three.

riers most in need of additional numbering resources — new entrants, rapidly growing carriers — will be unable to obtain numbers and will be precluded from providing services the public desires.

Sprint PCS has also examined the possibility of a tiered utilization approach whereby the applicable utilization level would be based on the total number of NXX codes held by each carrier. For example, a 40% utilization threshold would be applied to carriers holding one to three codes; a 50% threshold would be applied to carriers holding four to nine codes; a 60% threshold applied to carriers holding 10 to 25 codes; an 70% threshold applied to carriers holding 26-50 codes; and a 80% threshold applied to carriers holding over 50 codes. While such an approach might help ameliorate the disparity between incumbents and new entrants over their existing reserve of numbers and their ability to survive a period of rationing, it would not address the situation faced by carriers that are growing rapidly.

Whatever conservation solutions the Commission may adopt, it must remember that public demand for desired telecommunications services will not be tempered by the adoption of conservation measures. And, it is critically important that the Commission reaffirm that state commission must grant (preferably within a specified time such as 30 days) documented requests for extraordinary relief.²¹

B. Possible Modifications/Additions to CTIA's Proposal

Sprint PCS below identifies two ways that the CTIA proposal might be improved.

1. Assignment of Special Use Codes Should Be Prohibited During a Jeopardy Condition. CTIA proposes that carriers be permitted to acquire so-called "special use" codes regardless:

Carriers may request numbering resources in a given rate center for "special services" which require separate blocks of numbers. These special services shall include, though not be limited to, FEMA Priority codes, prepaid services, calling party pays, and other special services. Utilization

²¹ See *Pennsylvania NPA Order*, NSC File No. L-97-42, FCC 98-224, at ¶ 27 (Sept. 28, 1998) ("If a NXX code exhaust situation in an area code becomes so dire that there are not NXXs available to assign to carriers, the NXXs that have been withheld from assignment must be made available for carriers."); *id.* at ¶ 49 ("[W]e grant additional authority to the Pennsylvania Commission . . . to hear and address claims of carriers claiming that they do not, or in the near future will not, have any line numbers remaining in their NXX codes, and will be unable to service customers if they cannot obtain an NXX, or that they are using or will have to use extraordinary and unreasonably costly measures to provide service.").

of numbering resources allocated for special services shall be calculated and reported separately.²²

Sprint PCS submits that clarification of this proposal is warranted. Sprint PCS further notes and agrees with the *NXX Code Assignment Guidelines*, which provide that the use of special use codes “should be minimized” when an NPA is in jeopardy.²³

“Special use” codes, codes utilized “for distinct routing, rating, or billing purposes,”²⁴ can be misused by carriers. For example, a carrier could request assignment of a special use code, but then use it as an initial or growth code. There is no enforcement mechanism in place to ensure special use codes are not misused in this fashion. At minimum, the Commission should confirm that it is inappropriate for a carrier to use a special use code as an initial or growth code.

More fundamentally, as Sprint PCS understands the CTIA proposal, special use codes could be obtained outside the recommended utilization thresholds applicable to all other codes. Sprint PCS obviously is not opposed to carriers introducing new services (calling party pays) or expanding existing services (prepaid). However, it is not apparent why this development should entitle that carrier to special (*i.e.*, better) treatment than other carriers in obtaining codes during a time of jeopardy.

If an NPA is in jeopardy, then the “demand for NXX resources will exceed the known supply during the planning/implementation interval for relief.”²⁵ Consequently, the assignment of a special use code while an NPA is in jeopardy could very well prevent other carriers from obtaining an initial or growth code necessary to provide service altogether. It is not apparent to Sprint PCS why any carrier should be deprived of numbering resources needed to provide its core set of services so that another carrier can provide a “special service” — particularly when many special services can be provided within an initial or growth code.²⁶

²² See CTIA Proposal § I, bullet five

²³ *NXX Code Assignment Guidelines* at § 9.4(E).

²⁴ *Id.* at § 4.2.2.

²⁵ *Id.* at § 13, Jeopardy NPA definition.

²⁶ Clarification may also be appropriate over the use of the word “required” in the CTIA proposal. For example, as currently written, CTIA’s proposal would suggest that a separate code is “required” to provide prepaid services. In fact, Sprint PCS provides its pre-paid services by reserving certain line ranges within an NXX block for assignment to this service (*e.g.*, 2,000 numbers for prepaid customers and 8,000 numbers for post-billed customers). Sprint PCS believes that its practice results in a more efficient use of codes than does the practice of using an entire block of 10,000 numbers for a special service.

2. Current COCUS Data Should Be on File with the Code Administrator as a Condition to Receiving Any NXX Codes. The Central Office Code Use Survey ("COCUS") is an annual report prepared by code administrators that "describes the present and projected use of CO codes for each NPA,"²⁷ and that is used "to anticipate and forecast NPA exhaust."²⁸ A code administrator can prepare an accurate COCUS only by obtaining critical forecast data from all code holders.

Although the submission of COCUS data to the code administrator is mandatory,²⁹ there is no enforcement mechanism for non-compliant carriers — that is, a code administrator is not expressly authorized to deny a code application to a carrier that has not submitted its COCUS data. Sprint PCS therefore recommends that the submission of current COCUS data be a condition to receiving any additional codes during a time of jeopardy.³⁰

* * *

Sprint PCS stands ready to work with the Commission to find meaningful solutions to the current numbering crisis. Sprint PCS knows first hand the unacceptable consequences that occur when a carrier cannot receive additional numbering resources when it needs them. However, while number conservation is important and should be pursued vigorously, it will not solve the current crisis. As CTIA notes in its proposal, the current crisis will be resolved only if the Commission establishes "strict guidelines to ensure the timeliness of State activities related to area code relief."³¹

²⁷ 47 C.F.R. § 52.15(b)(3). *See also id.* at § 52.13(c)(4). The industry is now considering use of a Line Number Utilization Survey ("LINUS") to determine the rate of number exhaust for numbers at the NXX code level and the life of the NANP. If this LINUS (or another) report is adopted, submission of this report should be a condition to obtaining additional codes as well.

²⁸ *Administration of the North American Numbering Plan*, 11 FCC Rcd 2588, 2617 ¶ 68 (1995).

²⁹ *See NXX Code Assignment Guidelines* at § 6.4.1. *See also* Letter from Alan C. Hasselwander, NANC Chair, to Josephine Gallagher, INC Moderator, at 1 (July 30, 1997) ("NANC's consensus is that all code assignees are required to provide the requested [COCUS] data to the NANP.").

³⁰ Indeed, it would be reasonable to impose this condition even when an NPA is not in jeopardy, because an inaccurate COCUS Report (caused by incomplete data) may underestimate the date that an NPA requires relief.

³¹ CTIA Proposal § V, bullet two.

Mr. Yog Varma
January 29, 1999
Page 10

Pursuant to Section 1.1206 of the Commission's *ex parte* Rules, an original and one copy of this letter and its attachment are being filed with the Secretary's office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Sprint Spectrum, L.P. d/b/a Sprint PCS

A handwritten signature in black ink, appearing to read "Jonathan M. Chambers". The signature is fluid and cursive, with the first name "Jonathan" being more prominent than the last name "Chambers".

Jonathan M. Chambers,
Vice President – External Affairs
and Assistant General Counsel

cc: Tom Sugrue, Chief, WTB
Jim Schlichting, Deputy Chief, WTB,
Jeanine Poltronieri, Senior Counsel, WTB
David Furth, Attorney Advisor, WTB
Blaise Scinto, Acting Division Chief, Network Services Division, CCB
Les Selzer, Economist, Network Services Division, CCB
Gail Radley-Teicher, Attorney Advisor, Network Services Division, CCB